IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 5794 of 2005
Date of decision : November 17, 2007

Ghan Shyam Singh & another

..... Petitioners

through Mr.Rajbir Sehrawat, Advocate with
Ms.Geeta Singhwal, Advocate

v.

State of Haryana & others

..... Respondents

through Mr.Ashish Kapoor, Addl.A.G.Haryana
Ms.Raminder Gadhoke, Advocate,
for respondents No.2 & 3.

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

The petitioners pray for the issuance of a writ in the nature of certiorari for quashing notifications, issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short herein after referred to as "the Act"), dated 10.11.2000 and 8.11.2001 respectively, as also for a direction commanding the respondents not to acquire the residential houses, comprised in Khasra Nos.15//15/3/3, 16/1, measuring 3 kanals, situated in village Nanhera, District Ambala.

The petitioners assert that they purchased a plot, measuring 3 kanals, bearing khasra Nos.15//15/3/3, 16/1, in village Nanhera, District Ambala, vide registered sale deed, dated 1.8.1996. A mutation, reflecting

the aforementioned purchase, was duly entered in the revenue record. The petitioners thereafter raised `A' class residential construction over the above land. In 1991, the respondents sought to acquire the aforementioned land but proceedings for acquisition were quashed, vide orders, passed by the High Court, in CWP No.2164 of 1992. The respondents, however, once again proceeded to notify the aforementioned land for acquisition and issued the impugned notifications, under Sections 4 and 6 of the Act, for the development and utilization of land as residential, commercial and industrial area for Sectors 10 and 11, Ambala Cantt.

Counsel for the petitioners contends that the petitioners purchased Khasra No.15//15/3/3, vide registered sale deed, dated 1.8.1996, and constructed houses thereon. The aforementioned land was never acquired by the State of Haryana, as the impugned notifications do not make any reference thereto. It is contended that even the assertion, made by the respondents, that this khasra number was acquired in 1989, is incorrect. The notification, issued in 1989, does not make any reference to this khasra number. It is, therefore, prayed that the respondents be restrained from asserting that they have acquired the petitioners' land and/or taking possession of their land.

On the other hand, counsel for the State of Haryana submits that Khasra No.15//15/3/3 was a part of Khasra No.15/3/3, which was acquired, pursuant to a notification, issued under Section 4 of the Act, dated 8.2.1989, a declaration made under Section 6 of the Act, dated 7.2.1990, and an award, passed by the Collector, dated 23.1.1992. Khasra No.15//15/3/3, ownership whereof is claimed by the petitioners, was apparently carved out by the revenue authorities, after the completion of

acquisition proceedings and was sold to the petitioners, without informing them that the land stood acquired. It is, therefore, prayed that as the land already stands acquired, the present writ petition be dismissed.

In order to counter the latter argument, counsel for the petitioners has drawn our attention to a jamabandi for the year 1986-87 (Annexure P-17), and by making a reference thereto asserts that Khasra No.15//15/3/3 was in existence in the year 1986-87. It was carved out prior to the issuance of the notification, under Section 4 of the Act, dated 8.2.1989. It is, therefore, prayed that as Khasra No.15//15/3/3 has not been acquired, whether by the impugned notifications, or the proceedings, initiated in 1989, the present petition be accepted.

We have heard learned counsel for the parties and perused the paper book, as also the record.

Before we proceed to adjudicate the present controversy, it would be necessary to mention here that counsel for the petitioners has given up challenge as regards Khasra No.16/1 and has confined his prayer to the land, comprised in Khasra No.15//15/3/3.

The pleadings, the documents on record, and the arguments addressed by counsel for the parties would necessitate adjudication as to whether Khasra No.15//15/3/3 was ever notified for acquisition and if not whether it was a part of Khasra No.15/3/3, which was acquired, pursuant to acquisition proceedings, initiated by way of the notification, dated 8.2.1989, issued under Section 4 of the Act.

It is not disputed by either counsel that Khasra No.15//15/3/3 does not find mention in the list of khasra numbers, mentioneded in the notifications, issued on 10.11.2000 and 8.11.2001.

As regards the acquisition, initiated in 1989, Khasra No. 15//15/3/3 does not find mentuon in the notification dated 8.2 .1989 issued under Section 4 of the Act, or the declaration, made under Section 6 of the Act, dated 7.2.1990, or the award, dated 23.1.1992. In order to rule out any error we have perused the rapat roznamcha, whereby possession was taken. The rapat roznamcha does not make any reference to Khasra No.15//15/3/3. It is, therefore apparent that Khasra No.15//15/3/3 does not find mention in the acqisition proceedings, initiated pursuant to the notification, issued in 1989.

Faced with the above situation, counsel for the State of Haryana, asserts that Khasra No.15//15/3/3 is not menioned in the 1989 acquisition as in 1989 it was a part of Khasra No.15/3/3, which khasra number is enumerated in the list of khasra numbers, mentioned in the 1989 acquisition. Khasra No.15//15/3/3 was carved out after acquisition and could, therefore, not have been mentioned in the 1989 acquisition. Counsel for the petitioners, however, controverts this assertion by making a reference to the jamabandi for the year 1986-87, which records Khasra No.15//15/3/3, as a separate and distinct khasra number, prior to the acquisition and, therefore, asserts that as Khasra No.15//15/3/3 is not enumerated in the list of khasra numbers. the writ petition be allowed.

In order to resolve this controversy, we directed the State of Haryana to place, before us, the relevant revenue record, which led to the carving out of Khasra No.15//15/3/3. The respondents have placed before us a photostat copy of the relevant revenue record, which discloses that the Assistant Collector IInd Grade, Ambala, passed an order, in partition proceedings, dated 26.2.1985, carving out Khasra No.15//15/3/3, from

Khasra No.15/3/3. This khasra number was thereafter incorporated in the jamabandi for the year 1986-87. It is, therefore, established that Khasra No.15//15/3/3 was in existence as a separate and distinct khasra number, duly reflected in the jamabandi that immediately preceded the notification, under Section 4 of the Act, dated 8.2.1989 and the land bearing Khasra No.15//15/3 was no longer a part of Khasra No.15/3/3. Consequently, the argument, addressed by counsel for the State of Haryana that this khasra number was a part of Khasra No.15/3/3 and was carved out post acquisition, is, factually incorrect.

As Khasra No.15//15/3/3 does not find mention in the notification, dated 8.2.1989 or in the declaration, made under Section 6 of the Act, dated 7.2.1990 or in the award, dated 23.1.1992, it would necessarily have to be held that Khasra No.15//15/3/3, and the land comprised therein were not acquired by the State of Haryana.

In view of what has been noticed herein above, the present writ petition is allowed. It is held that land comprised in Khasra No.15//15/3/3 belongs to the petitioners and the State of Haryana has no right, title or interest therein. The State of Haryana, however, may, if it deems appropriate/necessary, proceed to acquire land, comprised in Khasra No.15//15/3/3, by initiating a fresh process of acquisition.

No order as to costs.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

November 17, 2007
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